

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AZITA YOUSIAN, for Jason Amir, :
Plaintiff, :
- against - :
COMMISSIONER OF SOCIAL SECURITY, :
Defendant. :
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**MEMORANDUM
DECISION AND ORDER**

10 Civ. 2479 (BMC)

COGAN, District Judge.

Plaintiff *pro se* brings this action pursuant to the Social Security Act, 42 U.S.C. § 405(g), seeking disability insurance benefits and Supplemental Security Income on behalf of her son. The difficulty with her complaint is that the Commissioner has not rejected her claim (and may in fact ultimately allow it). All that has happened at this stage is that plaintiff has filed an initial application which was denied. She has requested a hearing before an Administrative Law Judge to review that determination, but the hearing has not yet been held. Accordingly, the Commissioner has moved to dismiss based on lack of subject matter jurisdiction, and I must grant that motion.

In opposing the motion, plaintiff states that she believes the Commissioner is delaying resolution of her son's case. I have no doubt that it may seem this way to her, but she only filed her application on October 23, 2009. This is not too long a time to wait for a hearing under the normal course given the way these hearings are scheduled. The reality is that it can often take that long to get a hearing scheduled. That is just the way the system works.

Plaintiff needs to understand that even if I wanted to be of some assistance at this stage, Congress says that I cannot. This Court lacks the power to intervene in every social security claim; Congress has provided that I can only review a final decision of the Commissioner. Any action taken by this Court prior to that time would have no legal effect.

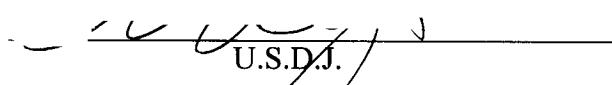
Accordingly, plaintiff must go through the administrative process. This entails going to a hearing before the Administrative Law Judge, who may allow the claim. If the Administrative Law Judge does not, plaintiff must appeal to the Appeals Council, which may also allow the claim. Only if she is unsuccessful there can she seek judicial review of her claim in this Court.

CONCLUSION

Defendant's motion to dismiss for lack of subject matter jurisdiction is granted.

SO ORDERED.

/Signed by Judge Brian M. Cogan/



U.S.D.J.

Dated: Brooklyn, New York
October 12, 2010